

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH)
BENEFITS FUND, PIRELLI ARMSTRONG)
RETIREE MEDICAL BENEFITS TRUST;)
TEAMSTERS HEALTH & WELFARE FUND)
OF PHILADELPHIA AND VICINITY;)
PHILADELPHIA FEDERATION OF)
TEACHERS HEALTH AND WELFARE)
FUND; DISTRICT COUNCIL 37, AFSCME -)
HEALTH & SECURITY PLAN; JUNE)
SWAN; BERNARD GORTER, SHELLY)
CAMPBELL and CONSTANCE JORDAN,)

Plaintiffs,)

v.)

FIRST DATABANK, INC., a Missouri)
corporation; and McKESSON)
CORPORATION, a Delaware corporation,)

Defendants.)

C.A. No. 1:05-CV-11148-PBS

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN SUPPORT OF CERTIFICATION OF THE U&C CLASS AND
PLAINTIFFS' PROFFER OF EVIDENCE COMMON TO THE U&C CLASS**

I, Steve W. Berman, hereby declare that:

1. I am a partner of Hagens Berman Sobol Shapiro LLP, resident in its Seattle, Washington, office, and I am one of counsel for the Plaintiffs in the above-captioned matter. I submit this declaration in support of Plaintiffs' Memorandum in Support of Certification of the U&C Class and Plaintiffs' Proffer of Evidence Common to the U&C Class.

2. Since the Court authorized discovery on "new issues raised by the Usual and Customary Class in the Third Amended Complaint" the parties have served subpoenas on approximately 40 third parties, including 27 of the largest retail pharmacies in the country.

Plaintiffs have requested that the pharmacies produce documents pertaining to their method of setting U&C prices. To date Plaintiffs have received documents from the following pharmacies: Longs, Rite Aid, Safeway, Shopko and Stop and Shop. McKesson has scheduled depositions for Longs, Rite Aid and Shopko, beginning later this month. Plaintiffs have also requested claims data from the pharmacies to examine the relationship between their U&C prices and third-party reimbursement amounts. The pharmacies have uniformly declined to produce the data because it is available directly from McKesson's RelayHealth, a mammoth switch that, according to its website, maintains connections to more than 90% of the nation's pharmacies, allowing them to transmit claims electronically to payors throughout the United States. Plaintiffs have requested the data from McKesson, who has raised certain objections. If the dispute is not resolved, Plaintiffs will move to compel.

3. The parties have requested discovery from 10 PBMs. To date, Plaintiffs have received documents from only Health Trans LLC, Medco Health Solutions and Pharmaceutical Technologies, Inc. Additionally, a small subset of the document production in the AWP MDL litigation is also relevant to the U&C claims.

4. Attached are true and correct copies of the following Exhibits:

Exhibit No.	Description
1	Express Scripts, Inc. Managed Prescription Drug Program Agreement (ESI-277-00000486-516) (pertinent pages only).
2	Medco Health Integrated Prescription Drug Program Master Agreement (MHS A-0000310-29) (pertinent pages only).
3	National Medical Health Card Systems - Pharmacy Benefit Manager Service Provider Agreement (NMHC/NEC 00432-55) (pertinent pages only).
4	Integrated Prescription Drug Program Master Agreement (CARP-00317-46) (pertinent pages only).
5	June 15, 2006 letter to Audrey Browne from Marc Palmer re: Letter of Amendment regarding January 1, 2004 Pharmacy Benefit Management Agreement between District Counsel 37 Health & Security Plan and Express Scripts (D37 0447-49).

6	Express Scripts Inc. Managed Prescription Drug Program Agreement (PFTWH 0046-77) (pertinent pages only).
7	Prescription Benefit Services Agreement (PIRELLI-FDB 0001574-1611) (pertinent pages only).
8	Coordinated Pharmaceutical Care Network Agreement – Schedule CPC 100 dated May 30, 2003 (MHS A_0005589).
9	Blue Shield of California Pharmaceutical Services Agreement with Rite Aid Corporation (RA-AWP 000001-16) (pertinent pages only).
10	Express Scripts PERx Managed Care Pharmacy Agreement (ESI-414-00001072-87) (pertinent pages only).
11	Confidentiality Agreement (CMK-AWP 001684-1706) (pertinent pages only).
12	McKesson Powerpoint (MCKAWP 0152030-36)
13	McKesson Powerpoint Presentation – Las Vegas, 2006 (MCKAWP 0151701-09) (pertinent pages only).
14	March 30, 2000 Letter to ProfitLink Customer from Marilyn McCale, McKesson Supervisor, Data Services (MCKAWP 0151565).
15	Minutes of Meeting dated June 13, 2005 (MCKAWP 0151641-43).
16	Rx-Net Proposed Automation Plan (MCKAWP 0151676-77).
17	Auto-Rx-Net Pricing Getting Started Guide (MCKAWP 0151683-91) (pertinent pages only).
18	Stop & Shop Pricing Philosophy (Stop & Shop 001).
19	Safeway Pricing Document (SFWY 000005).
20	Safeway Internal Email dated March 27, 2007 from Adam Meyer to Kristy Kilgore re: Pricing Concern (SFWY 000049).
21	Safeway Internal Email dated January 4, 2007 from Phil Cadero re: Pfizer Cost Increase (SFWY 000006-7).
22	GeriMed Consultant Pharmacist Software (GM02041-70) (pertinent pages only).
23	GeriMed Presentation Materials (GM02270-87) (pertinent pages only).
24	Deposition of Joseph Dorsch taken on December 8, 2004 in AWP-MDL (pertinent pages only).
25	Affidavit of Gary McFerrin dated March 17, 2008.
26	Rite Aid Corporation Pharmacy Purchasing Area Process Documentation #L.08-14 updated 02-22-06 (RA-AWP-000021-23).
27	Rite Aid Corporation Pharmacy Purchasing Area Process Documentation #L.08-49 updated 11-1-04 (RA-AWP-000024-26).
28	Rite Aid Corporation Pharmacy Purchasing Area Process Documentation #L.08-17 updated 11-01-04 (RA-AWP-000033-34).
29	Shopko's Monitoring Price Tables produced by Shopko March 2008.
30	September 14, 2007 Expert Report of Raymond S. Hartman (pertinent pages only).
31	Drugs Purchased by Plaintiff Shelly Campbell (CAMPBELL 000001-22).
32	Constance Jordan's records of drug purchases (JORDAN 000004-10).
33	Michael Bunns, <i>Picking a Cash Pricing Strategy</i> , COMPUTERTALK (January/February 2007)

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of April, 2008.

/s/ Steve W. Berman
STEVE W. BERMAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on April 21, 2008.

/s/ Steve W. Berman

Steve W. Berman

Exhibits 1-33

[FILED UNDER SEAL]